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Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**August 19, 2011**

**Re: Notice of *Ex Parte* Presentation  
Service Rules for 698-746, 747-762, and 777-792 Bands, WT Docket No. 06-150  
File No. EB-11-MDIC-0004**

Dear Ms. Dortch,

Following our previous *ex parte* notice filed in this proceeding on August 3, 2011, Free Press files this letter to disclose that on August 17, 2011, Chris Riley and Joel Kelsey of Free Press met with Louis Peraertz, Legal Advisor; Dave Grimaldi, Chief of Staff and Legal Advisor; and Jonathan Whitaker, Intern, in the office of Commissioner Clyburn, to discuss the informal complaint filed by Free Press against Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") for violating conditions made applicable to the Upper 700 MHz Band "C Block" licensee by Section 27.16 of the Commission's rules, 47 C.F.R. § 27.16. As before, we file this notice in the 700 MHz service rules docket in order to make it available via the Commission's Electronic Comment Filing System, in the absence of a public docket and record specific to our complaint.

During the meeting of August 17, the Free Press participants briefly summarized the complaint's allegations that Verizon Wireless has engaged in denying, limiting, or restricting its customers' access to certain applications and devices in violation of the C Block rules, as described in our informal complaint. We described in some detail the harm to consumers resulting from Verizon Wireless's actions towards third party tethering applications, including the harm to frequent travelers and particularly to those individuals and families who can only afford one broadband connection and choose to subscribe to mobile LTE service provided by Verizon Wireless. We emphasized that consumers purchase data transfer service from Verizon Wireless, and have the right to use that service for the applications and devices of their choice under the Commission's C Block rules.

We characterized the substantive response provided by Verizon Wireless as having three main components: 1) Tethering is not an application but rather a service; 2) Disabling access to an application in the Android Market is not the same as blocking the application; 3) Verizon Wireless is not blocking third party tethering applications because Google is the party responsible for disabling access in the Android Market. We responded to the first argument by noting that tethering does not change anything in the fundamental communications between a

cell phone and a cellular tower, and that Verizon Wireless's arguments could seemingly also be made to a third-party video application, such as that provided by Netflix, if Verizon Wireless offered a competing "service" for video streaming that the company sold as an add-on to wireless connectivity. Tethering is a software application that makes use of internal phone functionality; restricting tethering applications without the payment of a separate fee is akin to blocking third party alarm clock apps because they use the phone's internal speaker. To Verizon Wireless's second argument, we indicated that the C Block rules prevent the licensee from *denying, limiting, or restricting* the ability of a subscriber to use the applications or services of their choice. As we made clear in our complaint, these terms are not meant to be synonymous, but to speak to different categories of actions. The Android Market is by far the easiest method to install an app, and limiting apps solely to the use of alternative installation methods is assuredly a limit or a restriction. To the third, we noted that the Commission's C Block order expressly prohibits some third parties from disabling access to applications and services at the behest of the licensee, and that in any event Verizon Wireless cannot hide behind Google when the carrier directed Google to remove the apps, and simultaneously prohibits the use of such apps in its terms of service.

In addition to responding to Verizon Wireless's arguments, we reminded the Commission that the C Block rules were cited at great length in the recent Open Internet Order, and that the decision to adopt far weaker protections for mobile broadband users relied upon the existence and presumed enforceability of these rules. Finally, we reiterated our suggestion that, whatever the designation of this proceeding, the Commission should open a docket to accept comments and submissions from interested parties on the C Block violations committed by Verizon Wireless, to help build a transparent and written record on this issue.

Sincerely,

/s/ *Chris Riley*

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CC via email: Louis Peraertz, Dave Grimaldi